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9 Attorneys for Plaintiffs,
10 SOUTHWEST CARPENTERS PENSION TRUST and the
BOARD OF TRUSTEES FOR THE SOUTHWEST

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION
15

16 SOUTHWEST CARPENTERS PENSION
17 TRUST, and the BOARD OF TRUSTEES
FOR THE SOUTHWEST CARPENTERS
18 PENSION TRUST,

19 Plaintiffs
20

21 vs.

22 RODRIGUEZ PLASTERING, INC., a New
23 Mexico corporation; and DOES 1 – 10,
24 inclusive,

25 Defendants.
26

) CASE NO.: 19-cv-00372

) COMPLAINT FOR PAYMENT OF
WITHDRAWAL LIABILITY
PURSUANT TO ERISA
27
28

1 Carpenters Pension Plan” or “Pension Plan”) is a multiemployer pension benefit plan as
2 defined in §§ 3(37)(A) and 4001(a)(3) of ERISA, 29 U.S.C. §§1002(37)(A) and
3 1301(a)(3). Plaintiff PENSION TRUST’s administrative offices are located in Los
4 Angeles, California.

5 5. The PENSION TRUST is administered by individual trustees comprising
6 the BOARD OF TRUSTEES of the PENSION TRUST who are "fiduciaries" with
7 respect to the PENSION TRUST as defined in § 3(21)(A) of ERISA, 29 U.S.C. §
8 1002(21)(A), and are collectively the "plan sponsor" within the meaning of §
9 4001(a)(10)(A) of ERISA, 29 U.S.C. § 1301(a)(10)(A). The action is also brought in
10 the name of the Plaintiff BOARD OF TRUSTEES of the PENSION TRUST pursuant
11 to 29 U.S.C. §§1132(a)(3) and 1145.

12 6. The BOARD OF TRUSTEES of the PENSION TRUST has appointed
13 Carpenters Southwest Administrative Corporation (“CSAC”) to serve as the
14 administrator for the PENSION TRUST with authority to collect any all amounts due
15 and owing to the PENSION TRUST.

16 7. Southwest Regional Council of Carpenters and its affiliated Local Unions
17 (“UNIONS”) affiliated with the United Brotherhood of Carpenters and Joiners of
18 America, are labor organizations that are party to the collective bargaining agreements
19 involved.

20 8. Defendant RODRIGUEZ PLASTERING, INC. (“RODRIGUEZ”) was and
21 is a New Mexico corporation that performed work in the building and construction
22 industry using employees who were represented by the Union, defined below, from its
23 principal place of business in Las Cruces, New Mexico. Defendant RODRIGUEZ is an
24 employer within the meaning of ERISA §3(5), (29 U.S.C. §1002(5)) and is a “trade or
25 business” pursuant to 29 U.S.C. § 1301(b)(1).

26 9. Plaintiffs are ignorant of the true names and capacities of defendants who
27 are sued in this Complaint as DOES 1-10, inclusive, and therefore sues these defendants
28 by said fictitious names. Plaintiffs will amend this Complaint to allege the true names

1 and capacities of these defendants when ascertained.

2 10. Plaintiffs are informed and believe, and on that basis allege, that each of
3 the fictitiously-named defendants is a “trade or business” pursuant to 29 U.S.C. §
4 1301(b)(1) subject to joint and several liability for the withdrawal liability owed by
5 EMPLOYER. Each of the fictitiously named defendants was the agent, employee,
6 principal, co-venturer, affiliate, parent, subsidiary or under “common control” within
7 the meaning of ERISA with each of the other defendants in doing the things alleged
8 herein and was acting within the course and scope of such agency or employment
9 and/or the knowledge, authorization, or ratification of each of the other named
10 Defendants.

11 **FIRST CAUSE OF ACTION**

12 **(For Payment of Withdrawal Liability Assessed by the Southwest Carpenters**
13 **Pension Trust)**

14 11. On or about June 25, 2014, RODRIGUEZ, made, executed and delivered
15 to the UNION, a Southwest Regional Council of Carpenters New Mexico/West Texas
16 Statewide Agreement for the period June 1, 2014 through May 31, 2017
17 (“STATEWIDE AGREEMENT”) and a letter dated June 24, 2014 modifying the
18 STATEWIDE AGREEMENT. True and correct copies of the foregoing documents are
19 attached hereto marked as Exhibit “1” and “2”, and incorporated herein by reference.

20 12. Pursuant to the STATEWIDE AGREEMENT, RODRIGUEZ was also
21 obligated to adhere to the Amended and Restated Agreement Establishing the
22 Southwest Carpenters Pension Trust.

23 13. For a number of years prior to June 1, 2017, RODRIGUEZ was obligated
24 to pay fringe benefit contributions to the PENSION TRUST on behalf of its employees
25 for all hours of work covered by the STATEWIDE AGREEMENT.

26 14. The PENSION TRUST primarily covers employees who perform work in
27 the building and construction industry.

28 15. Substantially all of RODRIGUEZ’s employees for whom contributions

1 were owed to the PENSION TRUST worked in the building and construction industry.

2 16. After the expiration of the STATEWIDE AGREEMENT on May 31, 2017,
3 RODRIGUEZ ceased to have an obligation to pay contributions to the PENSION
4 TRUST. Within five years following May 31, 2017 RODRIGUEZ continued to perform
5 the same type of work in the jurisdiction of the STATEWIDE AGREEMENT of the
6 type for which contributions to the PENSION TRUST were previously required prior to
7 June 1, 2017.

8 17. On or about June 1, 2017 RODRIGUEZ incurred a complete withdrawal
9 from the PENSION TRUST by continuing to perform work in the jurisdiction of the
10 STATEWIDE AGREEMENT of the type for which contributions to the PENSION
11 TRUST were previously required, or due to the resumption of such work within 5 years
12 after the date on which the obligation to contribute to the PENSION TRUST ceased, but
13 without an obligation to pay contributions for that work.

14 18. On or around March 12, 2018 CSAC sent a withdrawal liability demand
15 letter to RODRIGUEZ informing it that it had incurred withdrawal liability totaling
16 \$191,069.00 which was payable in monthly installments of \$9,202.00 commencing the
17 first day of the calendar month which followed sixty (60) days after the date of the
18 letter. A true and correct copy of this March 12, 2018 letter has been attached as Exhibit
19 "3."

20 19. On April 2, 2018, RODRIGUEZ requested that the withdrawal liability
21 assessment be reviewed by the PENSION TRUST.

22 20. On May 29, 2018, the PENSION TRUST notified RODRIGUEZ that the
23 first monthly withdrawal liability installment of \$9,202.00 was due by June 1, 2018.

24 21. On June 19, 2018, notice was sent on behalf of RODRIGUEZ that they
25 wished to initiate arbitration. On June 22, 2018, a reply was sent on behalf of the
26 PENSION TRUST with a copy of the withdrawal liability procedures adopted by the
27 PENSION TRUST. Those procedures specify the manner of selecting an arbitrator and
28 provide that the initial filing fee for arbitration is to be paid by the party initiating

1 arbitration. Although the parties agreed on an arbitrator, RODRIGUEZ has never paid
2 the initial filing fee for the arbitration.

3 22. Notwithstanding the initiation of arbitration, RODRIGUEZ is required to
4 pay monthly installments of withdrawal liability according to the schedule set by the
5 PENSION TRUST. See 29 U.S.C. § 1399(c)(2) (“Withdrawal liability shall be payable
6 in accordance with the schedule set forth by the plan sponsor . . . beginning no later
7 than 60 days after the date of the demand notwithstanding any request for review or
8 appeal of determinations of the amount of such liability or of the schedule.”).

9 23. On October 10, 2018, the PENSION TRUST notified RODRIGUEZ that it
10 had failed to pay any installments of withdrawal liability. A true and correct copy of
11 this letter is attached as Exhibit “4.” The letter informed RODRIGUEZ that it needed
12 to cure the nonpayment within 60 days or face litigation.

13 24. More than sixty days has elapsed since the date of the letter attached as
14 Exhibit “4” and RODRIGUEZ has failed to cure its nonpayment of withdrawal liability
15 installments.

16 25. RODRIGUEZ owes interest on the unpaid withdrawal liability at the rate
17 set forth in 29 CFR § 4219.32(b) and as posted on the website of the Pension Benefit
18 Guaranty Corporation at www.pbgc.gov.

19 26. Under ERISA Section 4001(b)(1) (29 U.S.C. § 1301(b)(1)), each member
20 of a contributing employer’s control group is jointly and severally liable for the entire
21 assessed withdrawal liability.

22 27. Defendants, DOES 1-10, and each other member within the control group
23 are also liable for interest on the entire assessed withdrawal liability, an amount equal to
24 the greater of interest or liquidated damages, reasonable attorney’s fees and costs as
25 allowed under ERISA Sections 4301(b) and 502(g)(2) (29 U.S.C. § 1301(b) and
26 1132(g)(2)).

27 28. Plaintiff PENSION TRUST and its BOARD OF TRUSTEES, therefore,
28 seeks a money judgment against Defendants, RODRIGUEZ and DOES 1-10, and each

1 member within the control group for the unpaid withdrawal liability installments of
 2 \$9,202.00 pursuant to ERISA Section 4219(c)(5) (29 U.S.C. § 1399(c)(5)), plus accrued
 3 interest at the rate set forth in the PBGC's withdrawal liability regulation (29 CFR
 4 4219.32 on overdue or defaulted withdrawal liability) from the date of default, an
 5 amount equal to the greater of interest or liquidated damages of 20%, attorney's fees
 6 and costs pursuant to ERISA Sections 4301(b) and 502(g)(2) (29 U.S.C. § 1301(b) and
 7 1132(g)(2)).

8 **SECOND CAUSE OF ACTION**

9 **(For Payment of Withdrawal Liability Assessed by the Southwest Regional 10 Council of Carpenters/New Mexico Retirement Trust Fund)**

11 29. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 17,
 12 above.

13 30. The Southwest Regional Council of Carpenters/New Mexico Retirement
 14 Trust Fund ("NEW MEXICO FUND") merged into the PENSION TRUST effective at
 15 11:59 p.m. Pacific Standard Time on December 31, 2018. Prior to the merger, the
 16 NEW MEXICO FUND was an express trust formed and operated for the purpose of
 17 providing pension benefits to employees covered by collective bargaining agreements
 18 entered into between labor and management representatives in accordance with §
 19 302(c)(5) of the National Labor Relations Act, 29 USC §186(c)(5). The NEW
 20 MEXICO FUND provided pension benefits in accordance with an "employee pension
 21 benefit plan" as defined in § 3(2) of ERISA, 29 U.S.C. §1002(2). The pension plan
 22 maintained by the NEW MEXICO FUND (referred to hereafter as the "New Mexico
 23 Plan") was a multiemployer pension benefit plan as defined in §§ 3(37)(A) and
 24 4001(a)(3) of ERISA, 29 U.S.C. §§1002(37)(A) and 1301(a)(3). The administrative
 25 offices for the New Mexico Plan were located in Albuquerque, New Mexico prior to
 26 January 1, 2019.

27 31. By virtue of the merger between the New Mexico Plan and the Southwest
 28 Carpenters Pension Plan, the PENSION TRUST and its BOARD OF TRUSTEES are

1 the successor in interest to the NEW MEXICO FUND and are authorized to collect
2 amounts owed to the NEW MEXICO FUND that were incurred prior to the merger.

3 32. Defendants RODRIGUEZ and DOES 1 – 10 were required by the terms of
4 the STATEWIDE AGREEMENT attached hereto as Exhibit “1” and “2” to pay
5 contributions to the NEW MEXICO FUND for periods before January 1, 2019.

6 33. Pursuant to the STATEWIDE AGREEMENT, RODRIGUEZ was also
7 obligated to adhere to the Amended and Restated Agreement Establishing the
8 Southwest Regional Council of Carpenters/New Mexico Retirement Trust Fund.

9 34. For a number of years prior to June 1, 2017, RODRIGUEZ was obligated
10 to pay fringe benefit contributions to the NEW MEXICO FUND on behalf of its
11 employees for all hours of work covered by the STATEWIDE AGREEMENT.

12 35. The NEW MEXICO FUND primarily covers employees who perform
13 work in the building and construction industry.

14 36. Substantially all of RODRIGUEZ’s employees for whom contributions
15 were owed to the NEW MEXICO FUND worked in the building and construction
16 industry.

17 37. After the expiration of the STATEWIDE AGREEMENT on May 31, 2017,
18 RODRIGUEZ ceased to have an obligation to pay contributions to the NEW MEXICO
19 FUND. Within five years following May 31, 2017 RODRIGUEZ continued to perform
20 the same type of work in the jurisdiction of the STATEWIDE AGREEMENT of the
21 type for which contributions to the NEW MEXICO FUND were previously required
22 prior to June 1, 2017.

23 38. On or about June 1, 2017 RODRIGUEZ incurred a complete withdrawal
24 from the NEW MEXICO FUND by continuing to perform work in the jurisdiction of
25 the STATEWIDE AGREEMENT of the type for which contributions to the NEW
26 MEXICO FUND were previously required, or due to the resumption of such work
27 within 5 years after the date on which the obligation to contribute to the NEW
28 MEXICO FUND ceased, but without an obligation to pay contributions for that work.

1 39. On July 12, 2018 the NEW MEXICO FUND sent a withdrawal liability
2 demand letter to RODRIGUEZ informing it that it had incurred withdrawal liability
3 totaling \$319,188.00 which was payable in quarterly installments of \$7,040.00 for 80
4 quarters. A true and correct copy of this July 12, 2018 letter has been attached as
5 Exhibit “5.”

6 40. On September 12, 2018, notice was sent on behalf of RODRIGUEZ that
7 they wished to initiate arbitration regarding the assessment of withdrawal liability
8 referred to in Exhibit “5”.

9 41. On October 1, 2018, the NEW MEXICO FUND notified RODRIGUEZ
10 that the Board of Trustees of the NEW MEXICO FUND had rejected the request for
11 review submitted by RODRIGUEZ PLASTERING. The letter informed RODRIGUEZ
12 PLASTERING that the initial installment of withdrawal liability was due on September
13 16, 2018. A true and correct copy of this letter is attached as Exhibit “6.”

14 42. Notwithstanding the initiation of arbitration, RODRIGUEZ is required to
15 pay quarterly installments of withdrawal liability according to the schedule set by the
16 NEW MEXICO FUND. See 29 U.S.C. § 1399(c)(2) (“Withdrawal liability shall be
17 payable in accordance with the schedule set forth by the plan sponsor . . . beginning no
18 later than 60 days after the date of the demand notwithstanding any request for review
19 or appeal of determinations of the amount of such liability or of the schedule.”).

20 43. More than sixty days has elapsed since the date of the letter attached as
21 Exhibit “6” and RODRIGUEZ has failed to cure its nonpayment of withdrawal liability
22 installments.

23 44. RODRIGUEZ owes interest on the unpaid withdrawal liability at the rate
24 set forth in 29 CFR § 4219.32(b) and as posted on the website of the Pension Benefit
25 Guaranty Corporation at www.pbgc.gov.

26 45. Under ERISA Section 4001(b)(1) (29 U.S.C. § 1301(b)(1)), each member
27 of a contributing employer’s control group is jointly and severally liable for the entire
28 assessed withdrawal liability.

1 46. Defendants, DOES 1-10, and each other member within the control group
2 are also liable for interest on the entire assessed withdrawal liability, an amount equal to
3 the greater of interest or liquidated damages, reasonable attorney's fees and costs as
4 allowed under ERISA Sections 4301(b) and 502(g)(2) (29 U.S.C. § 1301(b) and
5 1132(g)(2)).

6 47. Plaintiff PENSION TRUST and its BOARD OF TRUSTEES, therefore,
7 seeks a money judgment against Defendants, RODRIGUEZ and DOES 1-10, and each
8 member within the control group for the unpaid quarterly withdrawal liability
9 installments of \$7,040.00 pursuant to ERISA Section 4219(c)(5) (29 U.S.C. §
10 1399(c)(5)), plus accrued interest at the rate set forth in the PBGC's withdrawal liability
11 regulation (29 CFR 4219.32 on overdue or defaulted withdrawal liability) from the date
12 of default, an amount equal to the greater of interest or liquidated damages of 20%,
13 attorney's fees and costs pursuant to ERISA Sections 4301(b) and 502(g)(2) (29 U.S.C.
14 § 1301(b) and 1132(g)(2)).

15 WHEREFORE, Plaintiffs PENSION TRUST and its BOARD OF
16 TRUSTEES pray for relief against Defendants RODRIGUEZ and DOES 1 - 10 as
17 follows:

18 FIRST CAUSE OF ACTION

- 19 1. For unpaid withdrawal liability installments of \$9,202.00 per month for all
20 months from June 1, 2018 to the present;
- 21 2. For interest on unpaid withdrawal liability from June 1, 2018 until paid pursuant
22 to 29 U.S.C. §1399(c)(6) at the rate set forth in 29 CFR § 4219.32(b);
- 23 3. For liquidated damages equal to the greater of interest or liquidated damages of
24 20%;
- 25 4. For reasonable attorney's fees and costs of suit;
- 26 5. For an order compelling Defendants to continue making monthly payments of
27 withdrawal liability to the PENSION TRUST pending the outcome of the
28 arbitration, and

6. For such other and further relief as the Court may deem just and proper.

SECOND CAUSE OF ACTION

1. For unpaid withdrawal liability installments of \$7,040.00 per quarter for all quarters from September 16, 2018 to the present;
2. For interest on unpaid withdrawal liability pursuant to 29 U.S.C. §1399(c)(6) at the rate set forth in 29 CFR § 4219.32(b);
3. For liquidated damages equal to the greater of interest or liquidated damages of 20%;
4. For reasonable attorney's fees and costs of suit;
5. For an order compelling Defendants to continue making quarterly payments of withdrawal liability to the PENSION TRUST pending the outcome of the arbitration, and
6. For such other and further relief as the Court may deem just and proper.

DATED: January 17, 2019

DECARLO & SHANLEY
A Professional Corporation

By: /s/ Daniel M. Shanley

Daniel M. Shanley, Attorneys for Plaintiffs,
SOUTHWEST CARPENTERS PENSION
TRUST and the BOARD OF TRUSTEES
FOR THE SOUTHWEST CARPENTERS
PENSION TRUST

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